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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 71-834

ROSALIND McCLANAHAN, on behalf of herself and all others similarly situated,

Appellant,

vs.

ARIZONA STATE TAX COMMISSION,

Appellee.

On Appeal from the Supreme Court of Arizona

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Rosalind McClanahan, appellant herein, is a citizen of the United States and an enrolled member of the Navajo Tribe of Indians. During the 1967 calendar year, the appellant

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Appellee.

On Appeal from the Supreme Court of Arizona

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Ronald McClanahan, appellant herein,
is a citizen of the United States and an en-
rolled member of the Navajo Tribe of Indians.
During the 1967 calendar year, the appellant

resided within the exterior boundaries of the Navajo Indian Reservation, on that part of the reservation which is in the State of Arizona. The appellant's income during 1967 was wholly derived from sources within the Navajo Indian Reservation. The total amount of tax withheld from the appellant's income pursuant to Ariz.Rev.Stat.Ann. § 43-188(f) was $16.20. Thereafter the appellant instituted a class action for refund in the Superior Court of Arizona in and for Apache County on June 17, 1969, pursuant to Ariz.Rev.Stat.Ann. § 43-186(d)A.2.

Appellee moved to dismiss on the grounds that the complaint failed to state a claim upon which relief could be granted. A.1. The appellee based its position on the following premises: (1) the imposition of this income tax does not interfere with the

self government of the Navajo Tribe of Indians, (2) the Arizona Enabling Act, 36 Stat. 557, 570 (1910) and the Arizona Constitution, Art. XX do not prohibit the State of Arizona from taxing the income of Indians residing on a reservation; and (3) the Treaty of 1868 between the United States and the Navajo Tribe, 15 Stat. 667, does not contain any provision that would prohibit the imposition of the Arizona state income tax on that part of the Navajo Indian Reservation within the boundaries of the State of Arizona.

The appellant in responding to appellee's assertions, contended that (1) absent an act of Congress, Arizona has no power to tax appellant's income; (2) imposition of the tax interferes with powers essential to the self government of the Navajo Tribe;

and (3) the Arizona Enabling Act and Article XX of the Arizona Constitution preclude the State of Arizona from applying its income tax laws to Indians residing on the reservation.

A minute entry order was entered on October 16, 1969, granting the motion to dismiss of the State of Arizona. Thereafter the appellant filed a motion, dated October 22, 1969, for rehearing of order granting motion to dismiss and an amended complaint which appellant certified was mailed to the appellee on November 4, 1969. The appellee filed a motion to quash amended complaint dated November 7, 1969. By minute entry order of January 12, 1970, the Superior Court denied the appellant's motion for rehearing and ordered the striking and quashing of the appellant's amended complaint.

The Superior Court's amended opinion and order dismissed the appellant's complaint on January 12, 1970, holding that the State of Arizona did not require express congressional authority to tax appellant, and that the income tax imposed and collected by appellee did not interfere with tribal self government. A.6. The appellant filed a timely notice of appeal to the Court of Appeals of the State of Arizona.

The Court of Appeals affirmed the Superior Court's dismissal of the complaint on April 28, 1971, holding that the Arizona income tax did not infringe on the Navajo Tribe's right of self government and that the tax was not prohibited by the Arizona Enabling Act (Sec. 20, 36 Stat. 569) and the Arizona Constitution (Art. XX, Fourth). McClanahan v. State Tax Commission, 14 Ariz.

App. 452, 484 P.2d 221. On May 11, 1971, the appellant moved for a rehearing, which was denied on June 8, 1971. The appellant then filed a petition for review by the Supreme Court of Arizona on June 22, 1971, and that petition was denied on September 21, 1971. A.8.

The appellant filed the Notice of Appeal to the Supreme Court of the United States in the Superior Court, the court possessed of the record on October 4, 1971. A.1. The appellant secured an extension of time to docket the appeal, which was due on December 20, 1971, and the appeal was docketed on December 23, 1971.

SUMMARY OF ARGUMENT

The residual jurisdiction of states on Indian reservations has been recognized in

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SUMMARY OF ARGUMENT

The residual jurisdiction of states on Indian reservations has been recognized in

the rule that state laws may apply to Indians unless such application would interfere with reservation self government or impair a right granted or reserved by federal law. Imposition of a state personal income tax on residents of an Indian reservation, including Indians, does not interfere with reservation self government or impair any right granted or reserved by federal law.

No act of Congress prohibits the imposition of state income taxes on Indians residing on Indian reservations or creates any rights which would be impaired by imposition of a state income tax on the income of such Indians. The right of states to impose such income taxes has been repeatedly recognized. By reason of statehood Arizona has the jurisdiction to impose its income tax on Indian reservations and Arizona has

never surrendered that jurisdiction.

The plain implication of the language used in the rule referred to above of the test of validity of state action is that state jurisdiction on Indian reservations does not depend upon express congressional authorization. This rule recognizes the power of Congres, the Indian right of self government and the role of the state in bridging gaps in the law applicable to Indian reservations. Accordingly, the decision of the Court of Appeals of Arizona should be affirmed.

ARGUMENT

I. EXPRESS CONGRESSIONAL AUTHORIZATION NOT ESSENTIAL FOR VALIDITY OF STATE ACTION

From the recent decisions in Williams v. Lee, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d

251 (1959); Organized Village of Kake v. Egan, 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962) and Kennerly v. District Court of Montana, 440 U.S. 423, 91 S.Ct. 480, 27 L.Ed.2d 507 (1971), it is now established that the rule for determining validity of state action in respect to Indian reservations is whether the action is prohibited by a governing act of Congress or infringes upon the Indian right of self government. This test clearly indicates that there is a residual state jurisdiction. This residual state jurisdiction is not authorized by act of Congress. It exists by reason of statehood. Because of this state jurisdiction Enabling Act provisions of some states reserved sufficient powers to Congress to enable it to take appropriate action in the future in respect to matters of concern to

the federal government such as the proprietary interest of the Indians in Indian land.

From the case law and legislative history, it is evident that this rule for determining validity of state action completely states the limitations on state action in respect to Indian reservations. It was undoubtedly because congressional authorization of state action was not required by the Act of June 20, 1910, 36 U.S. Stat. 557, provided in Section 20 thereof that the lands owned by Indian tribes would remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States. If express congressional authorization had been a requirement, such a provision would have been completely superfluous.

Numerous acts of Congress prohibit

state taxation in respect to Indian reservations and nearly as many statutes authorize state taxation. 1/ Statutes authorizing state taxation were necessary because the property was formerly exempted from taxation by state enabling acts or because it was United States property or property of an instrumentality of the United States. This statutory pattern of prohibiting state taxation in specific situations and authorizing state taxation where it was previously pro-

---

1/ The following sections of Title 25 prohibit state taxation: 86 (1914), 233 (1950), 348 (1887), 409a (1931), 412a (1936), 465 (1934), 564c (1958), 416i (1966), 487c (1970), 492 (1970), 355 (1918). The following sections of Title 25 authorize state taxation: 349 (1887), 379 (1902), 398 (1929), 399 (1919), 401 (1924), 501 (1936), 608 (1964), 674 (1953), 610b (1968) and 645 (1970).

hibited by statute or judicial decision indicates that during the past seventy years congressional authorization of state taxation was not required.

Whenever, upon the admission of a state into the Union, Congress intended to except out of it an Indian reservation, or the sole and exclusive jurisdiction over that reservation, it has done so by express words. United States v. McBratney, 104 U.S. 621, 26 L.Ed. 869 (1882). An example of a case in which Indian lands were excluded from the jurisdiction of the state by treaty and by the subsequent act of Congress admitting that state to the Union is Kansas Indians, 5 Wall. 737. More recent decisions indicating congressional authorization of state action is not required are New York v. Martin, 326 U.S. 496, 90 L.Ed. 261 (1946),

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in which the Court held that in the absence of a limiting treaty obligation or congressional enactment each state had a right to exercise jurisdiction over Indian reservations within its boundaries and Warren Trading Post v. Arizona Tax Commission, 380 U.S. 685, 85 S.Ct. 1242, 14 L.Ed.2d 165 (1965), in which the Court held that Arizona could not impose its transaction privilege tax on sales by licensed Indian traders to Indians because Congress had preempted the regulation of Indian trading on reservations. If congressional authorization of state taxation was required, it would not have been necessary for the Court to have decided the Warren Trading Post case on the ground of congressional preemption of the field.

Indian reservations constitute a sub-

stantial portion of the area of some states. If Congress had intended that congressional authorization was required in order for states to impose taxes on Indian reservations there would certainly have been some express language in some act of Congress that expressly provided for such an important limitation on the states. In rejecting an exclusive federal legislative authority argument in Silas Mason Company v. Tax Commission, 302 U.S. 186, 82 L.Ed. 187 (1937), the Court observed that while title to these Indian lands had always been in the United States, the state had never ceded exclusive legislative authority to the United States. The Washington Enabling Act provisions are like those of Arizona. Neither the Arizona Enabling Act, 36 U.S. Stat. 557, nor the general pattern of the congressional acts

pertaining to taxation of Indian lands, nor the case law indicates that such a limitation on state taxing power exists.

II. IMPOSITION OF ARIZONA INCOME TAX DOES NOT IMPAIR ANY RIGHTS GRANTED OR RESERVED BY FEDERAL LAW

The Act of June 20, 1910, 36 U.S. Stat. 557, which provided for the admission of Arizona to the Union contained provisions in Section 20 that the people of the proposed state forever disclaim all right and title to all lands lying within the boundaries of the state owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribe shall have been extinguished the same shall be and remain sub-

ject to the disposition and under the absolute jurisdiction and control of the United States. It is apparent from the context of the above provisions that the disclaimer and the absolute jurisdiction and control of the United States Congress both relate to the proprietary interest in the land of the Indian tribes.

The same paragraph of the Enabling Act also prohibits the United States from taxing such lands. If the words "absolute jurisdiction and control" were not used in such a limited sense, then the provision relating to taxes would be superfluous. It wouldn't be necessary to prohibit the imposition of state property taxes if the state had no jurisdiction. The fact that the prohibition is limited to property taxes clearly implies that the state does have the power

to impose other taxes.

The limited scope of these Enabling Act provisions is further indicated by several cases. In Draper v. United States, 164 U.S. 240, 17 S.Ct.Rptr 107 (1896), the Court had occasion to consider the meaning of the "absolute jurisdiction and control" provision of the Montana Enabling Act, 25 Stat. 676. The Court concluded that this restrictive language was used because it was necessary in order to prevent any implication of state power to frustrate limitations imposed by the laws of the United States upon title to Indian lands which had become extinct by allotment in severalty. Thus, the Court rejected the argument that this language provided for exclusive jurisdiction in the federal government.

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The meaning of this "absolute jurisdic-

tion and control" provision in the Arizona Enabling Act was considered in Porter v. Hall, 34 Ariz. 308, 321, 271 P. 411 (1928), and the court there concluded that this language applies to Indian lands considered as property and not as a territorial area withdrawn from the sovereignty of the State of Arizona. The meaning of the words "absolute jurisdiction and control" in the Alaska Enabling Act, 72 Stat. 339, was considered in Organized Village of Kake v. Egan supra, and the Court concluded that these words did not mean exclusive jurisdiction.

The same provisions of the North Dakota Enabling Act, 25 Stat. 676, were construed in Vermillion v. Spotted Elk, 85 N.W.2d 432 (1957), and the court held that the reservation of jurisdiction applied only to rights of Indians in their lands and that the pur-

pose of the disclaimer was to safeguard the interest of the Indians in their allotments. The court had occasion to consider the meaning of the disclaimer provision of the New Mexico Enabling Act, 36 Stat. 557, in Ghahate v. Bureau of Revenue, 80 N.M. 98, 451 P.2d 1002 (1969), and concluded that the disclaimer was a disclaimer of proprietary rather than governmental interest. In Organized Village of Kake v. Egan, supra, the Court concluded that the disclaimer provision in the Alaska Enabling Act, 72 Stat. 339, was a disclaimer of proprietary interest.

The limited meaning of the disclaimer and "absolute jurisdiction and control" provisions of the Enabling Acts is indicated by the Court's observation in Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S.Ct. 455 (1929), that state laws have the same force

on Indian reservations as elsewhere within state limits except that they can only have restricted application to the Indian wards. Because of the residual nature of the state's jurisdiction on Indian reservations, state laws can only have limited application to Indians. As the cases previously cited herein indicate, state laws cannot apply if a governing law of Congress is applicable or if the application of state laws would interfere with the Indian right of self government. These cases indicate that state enabling act limitations such as those of the State of Arizona do not prohibit the application of a state income tax to Indian residents of an Indian reservation.

In 1953 Congress was advised by the then Assistant Secretary of the Interior in a letter dated July 7, 1953 to The Honorable

A. L. Miller, Chairman of the Committee on Interior and Insular Affairs, House of Representatives, that state enabling acts of certain states required the people of the proposed states to include provisions in their Constitution disclaiming jurisdiction over Indian lands and providing that until the Indian title was extinguished the lands were to remain under the absolute jurisdiction and control of Congress and that as a consequence of these enabling acts and constitutional provisions, Congress would have to give its consent and the people of such states would have to amend their Constitution before such states could legally assume jurisdiction over Indian reservations. 1953 U.S. Code Congressional and Administrative News, 2414.

It did not appear from the Committee

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It did not appear from the Committee

reports that Congress was aware that the Assistant Secretary of the Interior's view of the enabling act provisions ascribed a much broader meaning to those provisions than was originally intended by the congressmen who enacted them out of a concern for protecting the proprietary interest of the Indians in their land and making certain that the United States had sufficient power to legislate in respect to its interests. Shortly after receipt of the Assistant Secretary's letter, Congress enacted legislation providing for consent of the United States to acquisition of state jurisdiction. 67 Stat. 588, Ch. 505, §§ 6 and 7.

The two coordinate aims of this legislation were (1) withdrawal of federal responsibility for Indian affairs wherever practicable and (2) termination of the objec-

tion of Indians to federal laws applicable to Indians as such. H.R. Rep. No. 848, 83d Cong., 1st Sess. 1953 U.S. Code Congressional and Administrative News, 2409. Thus, the legislators considered this legislation was necessary for the purpose of termination of federal responsibilities in respect to Indian reservations rather than for the purpose of federal preemption of jurisdiction over the reservations. This narrow purpose of P.L. 280, Act of August 15, 1953, 67 Stat. 588, was recognized in Vermillion v. Spotted Elk, (North Dakota) supra, and Ghahate v. Bureau of Revenue, supra. As the Court noted in the Ghahate case, the fact that New Mexico had not assumed jurisdiction over reservation Indians did not indicate any withdrawal or loss of the jurisdiction recognized in Organized Village of

Kake v. Egan, supra, and Williams v. Lee, supra.

Under the Indian Civil Rights Act of 1968, 25 U.S. Code 1324, 82 Stat. 79, and 25 U.S. Code 1326, 82 Stat. 80, a procedure was provided by which any states with enabling act and constitutional impediments to assumption of civil and criminal jurisdiction might remove such impediments by amendment of their constitution and statutes provided that state jurisdiction with respect to criminal offenses or civil causes of action would be applicable in Indian country only where a majority of the Indians voted to accept such jurisdiction. These provisions of the Indian Civil Rights Act merely amended P.L. 280 to add a requirement for Indian approval of state assumption of jurisdiction with respect to criminal of-

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The decision in Kennerly v. District Court of Montana, supra, is not controlling in this case because the question presented to the Court there was solely a question of the procedures by which the tribal consent was obtained under the Indian Civil Rights Act and the Court did not have occasion to go into the question of the scope of the Indian Civil Rights Act and residual state jurisdiction. Furthermore, the case only involved a question of jurisdiction of the courts rather than the question of general governmental jurisdiction. In view of the limited purpose of P.L. 280 and the Indian Civil Rights Act to provide a procedure for removing enabling act and state constitutional impediments to state jurisdiction, those laws do not bar the imposition of a

issues or civil causes of action.

The decision in Kennedy v. District Court of Montana, supra, is not controlling in this case because the question presented to the Court there was solely a question of the procedures by which the tribal consent was obtained under the Indian Civil Rights Act and the Court did not have occasion to go into the question of the scope of the Indian Civil Rights Act and residual state jurisdiction. Furthermore, the case only involved a question of jurisdiction of the courts rather than the question of general governmental jurisdiction. In view of the limited purpose of P.L. 280 and the Indian Civil Rights Act to provide a procedure for securing enabling act and state constitutional impediments to state jurisdiction, these laws do not bar the imposition of a

state income tax on incomes of Indian residents of an Indian reservation.

The appellant has contended that the Buck Act, 54 Stat. 1059 (1940), reenacted and codified as 4 U.S. Code 105-110 (1947), is an Act of Congress which governs this case. 4 U.S. Code 109 provides:

> 109 Same. Exception of Indians
>
> Nothing in §§ 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indians not otherwise taxed.

It was never intended that the Buck Act should apply to Indian reservations and the above quoted language was inserted after the objections had been made by the Acting Secretary of the Interior for the express purpose of maintaining the status quo in respect to Indian reservations. 84 CONG. REC. 10685 (1939). In Warren Trading Post v.

Arizona Tax Commission, supra, the Court agreed that this legislation did not apply to Indians. It cannot seriously be argued that legislation which has no application constitutes a restriction of state taxing power. From the foregoing analysis, it is evident that no act of Congress prohibits the State of Arizona from imposing its income tax on the income of Indians residing on an Indian reservation within the State and that imposition of the tax does not impair any right granted under any act of Congress.

III. IMPOSITION OF ARIZONA INCOME TAXES DOES NOT INFRINGE UPON INDIAN RIGHT OF SELF GOVERNMENT

Cases involving state and federal relations effectively define the right of self government. These cases clearly indicate that the imposition of Arizona's income tax

on Navajo residents of the servation would not violate the right of self government of the Navajo Tribe. States have been permitted to tax employees of the federal government on the theory that such taxation by the state does not constitute an undue interference with the governmental activities of the federal government. Graves v. New York, 306 U.S. 466, 59 S.Ct. 595, 83 L.Ed. 927 (1938). In Sims v. United States, 359 U.S. 108, 79 S.Ct. 641, 3 L.Ed.2d 667 (1959), the Court upheld an Invernal Revenue Service levy on the salary of an employee of the State of West Virginia. The levy was directed to the State. Certainly the Navajo Tribe does not stand on a higher plane in respect to the question of self government than the state and federal governments. If states can impose income taxes on federal employees, they

certainly don't violate the right of self government of Indian tribes by imposing income taxes on members of Indian tribes residing within the state.

Indians are subject to payment of federal income taxes as are other citizens, unless an exemption from taxation can be found in the language of a treaty or an act of Congress. Commissioner of Internal Revenue v. Walker, 326 F.2d 261 (9th Cir. 1964). If it doesn't violate the tribal right of self government for the federal government to impose an income tax on Indians, it certainly doesn't violate the right of self government for the state to impose such a tax.

Imposition of the Arizona income tax on residents of the Navajo Indian Reservation doesn't violate any provision of the Treaty with the Navajo Indians of June 1, 1868,

15 Stat. 667. Imposing a personal income tax on residents of the reservation doesn't impose any burden on the Navajo tribal government. Accordingly, by all of the standards by which this question of infringement on the right of self government has traditionally been considered, imposition of this tax under the circumstances of this case on Indian residents of the Navajo Reservation doesn't infringe on the Navajo right of self government.

IV. INDIAN RESIDENTS OF NAVAJO RESERVATION ARE SUBJECT TO STATE INCOME TAX

Congress cannot have intended to impose federal income and inheritance taxes on the Indians and at the same time exempt them by implication from similar state taxes. When Congress wants to require non-taxability it

can, as it has so often done, say so explicitly. Oklahoma Tax Comm'n v. United States, 319 U.S. 598, 87 L.Ed. 1612 (1943). Treaties and statutes relating to the rights of Indians should be liberally construed in their favor. However, such principle comes into play only if such statute or treaty contains language which can reasonably be construed to confer income exemptions. Holt v. Comm'r of Int. Rev., 364 F.2d 38 (1966). As the preceding portions of this brief have pointed out, there is no treaty or statute which contains language that can reasonably be construed to confer state income tax exemptions on the members of the Navajo Tribe residing on the Navajo Reservation.

Indians are subject to the payment of income taxes as are other citizens. Squire v. Capoeman, 351 U.S. 1, 76 S.Ct. 611, 100

L.Ed. 883 (1956). Squire v. Capoeman is distinguishable from this case because the Court held capital gains from the sale of timber to be exempt from taxation under the General Allotment Act of 1887, 24 Stat. 388, 25 U.S. Code 331, et seq. This case involves income from personal services rather than property and the General Allotment Act has no application to this case. Imposition of state income taxes on Indians has been upheld in Leahy v. State Treas'r of Oklahoma, 297 U.S. 420, 56 S.Ct. 507, 80 L.Ed. 771 (1936); State Tax Comm'n v. W. L. Barnes, 178 N.Y.Supp.2d 932 (1958); Powless v. State Tax Comm'n, 253 N.Y.Supp.2d 438 (1964), and Ghahate v. Bureau of Revenue, supra. The only case that our research disclosed holding a state could not impose an income tax on Indian residents of an Indian reservation

is Comm'r of Taxation v. Brun, (Minn.) 147 N.W.2d 120 (1970).

In the Brun case the court based its decision on the grounds that the state did not have jurisdiction and that payment of the taxes would interfere with the tribal right of self government. Our arguments against the Minnesota court's position are set out in the earlier portions of the brief pertaining to applicable federal legislation and infringement on the right of self government. The Minnesota court was of the view that the economic impact on the individual tribal member constituted interference with the right of tribal self government. Other services besides governmental services have an economic impact and yet this sovereignty argument is not considered a defense to liability for such services. The court also

[illegible] Department of Taxation v. Mann, (Minn.) 147
[illegible] 2d 120 (1967).

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[illegible] services besides governmental services have
[illegible] economic impact and yet this sovereignty
[illegible]argument is not considered a defense to
[illegible]liability for such services. The court also

noted that Minnesota had not established that it provided benefits to these Indians and, therefore, it had no reason to impose any taxes.

As the Arizona Court of Appeals pointed out in McClanahan v. State Tax Comm'n, 14 Ariz.App. 452, 456, 484 P.2d 221 (1971), counsel for the appellant conceded during oral argument that monies of the State of Arizona were expended for education and welfare within the confines of the Navajo Reservation and the Navajo Indians were the beneficiaries of these expenditures. It appeared that the Minnesota court merely assumed that the economic impact on individual tribe members would affect the tribal right of self government. However, if the Minnesota court was really convinced that Minnesota did not have jurisdiction, it

would not have had to consider the question of whether the tax infringed on the tribal right of self government.

In Leahy v. State Treas'r of Oklahoma, supra, the Court noted that federal income taxes had been upheld in respect to the same type of income and concluded that since Leahy was entitled to the income and free to use it as he saw fit, there was no reason why such income should not also be taxable by the state. Thus, the decisions of the state and federal courts, with the exception of the Brun case, supra, indicate that income of Indians such as that in issue in this case is subject to state income taxation.

V. SOME RAMIFICATIONS OF APPELLANT'S POSITION

There are some fundamental contradictions between the appellant's claim that

states have only been allowed jurisdiction on Indian reservations pursuant to express congressional enactment and what has actually happened on the Navajo Reservation. It can hardly be disputed that Arizona laws apply on the Navajo Reservation for the purpose of conferring all kinds of rights, privileges and benefits on the Indian residents of the reservation.

Reservation Indians have the right to vote, Harrison v. Laveen, 67 Ariz. 337, 196 P.2d 456 (1948); the right to serve on a jury, Denison v. State, 34 Ariz. 144, 268 P. 617 (1928); and a practically guaranteed representation in the Arizona House of Representatives and Legislature, Klahr v. Williams, 339 F.Supp. 922 (1972). When states attempt to withhold benefits from Indian reservations, they are forced to pro-

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vide those benefits on the basis of the claim that failure to do so would constitute a denial of equal protection of the laws. Begay v. Sawtelle, 53 Ariz. 304, 88 P.2d 999 (1939); Bradley v. Arizona Corp. Comm'n, 60 Ariz. 508, 141 P.2d 524 (1943); State Bd. of Public Welfare v. Bd. of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

Thus, we see that Indians participate in the government of the State of Arizona and as counsel conceded in the oral argument in the Arizona Court of Appeals receive economic benefits from the State of Arizona. Now, does the appellant contend that the State of Arizona has no power to permit Indian participation in Arizona government and provide these benefits or is it their contention that the Indian residents of the reservation must receive all the benefits

of state citizenship, but none of the burdens of such citizenship can be imposed on them?

Many people in Arizona living off the Indian reservations are in modest and poor circumstances. It would certainly be a denial of the equal protection of the laws to exempt from all taxation a group that is sufficiently numerous to have its own representation in the Legislature while taxing other people who are equally poor additional amounts in order to pay for the governmental benefits of the reservation Indians. Since Brown v. Bd. of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), a pragmatic approach has been taken to equal protection questions. The appellant argues in favor of a system that would be grossly unequal and unreasonable.

In its amicus curiae brief the Solicitor

General refers to the vast amounts spent on the Navajo Reservation by the United States Government. We don't know how these amounts compare with those spent by the State of Arizona and we don't think the tax liability question turns on which government spends the most, but the figures point out one of the problems of Arizona's responsibilities. Budget items are frequently increased, decreased and eliminated without any changes in the general laws. When decreases or elimination of some of these items occur, the State of Arizona has the responsibility for supplying the essential services that are required. Since the Navajo Reservation is located in the State of Arizona, this State has the ultimate responsibility. This problem is further aggravated by the fact that the State of Arizona has an extremely narrow

tax base because most of the land in Arizona is owned by the United States and, thus, is not subject to taxation.

If, as the appellant apparently contends the residents of Indian reservations were a privileged class who have all of the rights, privileges and benefits of state government and none of its burdens, it would be entirely feasible for residents of Indian reservations located close to the metropolitan areas of Tucson and Phoenix to capitalize on the fact that they were operating out of an advantageously located island of tax immunity by selling cigarettes, other items on which there are high state excise taxes and large sales tax items such as automobiles and appliances at prices that would mean ruinous competition for those engaged in such businesses in the adjacent metropolitan

areas. Nothing cited by the appellant in any treaty or act of Congress including legislation to provide economic assistance to reservation Indians indicates that Congress ever intended to provide for such a result and self-determination of the Indian tribes certainly doesn't require this kind of over-protection to the extreme detriment of others.

CONCLUSION

Because of the logical, equitable and legal reasons set out above, the judgment of the Arizona Court of Appeals should be affirmed.

Respectfully submitted,

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July, 1972.